

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

KYLE FINNELL,

Petitioner, : Case No. 1:17-cv-268

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

TIM SCHWEITZER, Warden,
Lebanon Correctional Institution,

Respondent.

ORDER CONCERNING STATUS OF THE CASE

On February 13, 2020, Respondent filed a Status Report indicating this case was set before Common Pleas Judge Ruehlman in the Hamilton County Court for a “plea or trial setting” on March 5, 2020 (ECF No. 33).

In apparent response, Petitioner filed his “Prayer for the Record and Prayer to Left Stayed in Abeyance to Address the Jurisdictional Issues” (ECF No. 34). The Court denied Petitioner’s request for a second free copy of the record and denied without prejudice his request to continue the stay pending the outcome of his proceedings in prohibition in the Supreme Court of Ohio (ECF No. 35).

In his response to that Order, Finnell has advised this Court that the Supreme Court of Ohio dismissed his complaint in prohibition on October 16, 2019 (Entry, ECF No. 36, PageID 1722). In support of his claim that the First District Court of Appeals lacked jurisdiction, he attaches a number of exhibits. *Id.* at PageID 1710-33. He notes that his motion for new trial remains pending

in the Common Pleas Court and that a notice of appeal would be premature until that motion is disposed of.

The pre-existing stay in this case in this case (ECF No. 19) remains in place as does the order for periodic status reports. It would be premature for this Court to decide the extent to which the dismissal of the complaint in prohibition constitutes a decision on the merits of Petitioner's jurisdictional issues until completion of the new trial proceedings and any appeal from any adverse decision by either party.

March 5, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge